

## **REMARKS/ARGUMENTS**

In response to the Office Action mailed July 22, 2010, ("Office Action"), Applicants respectfully request reconsideration in view of the following remarks. Claims 1 and 14 are currently amended. Claims 1, 2, 10, 13 and 14 are pending. Claim 9 is cancelled and Claims 3-8, 11 and 12 were withdrawn.

No new matter has been introduced. While certain subject matter has been cancelled from the captioned application, such cancellation does not mean that any particular rejection that has been overcome by the above-amendment is proper. Such amendments were done to present the claim in better condition for allowance given the procedural posture of the captioned application. Applicants reserve full rights to reintroduce any cancelled subject matter in this or any other application claiming priority to the captioned application.

### **Rejections under 35 USC §103(a)**

Claims 1, 2, 9, 10, 13 and 14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Antoni-Zimmermann et al. (US 2003/0199490). Particularly, the Office Action alleges, inter alia, "selecting imazalil and DDAC would have been obvious to one of ordinary skill when selecting biocidally active ingredients." However, the Office Action "agrees that Antoni-Zimmermann fails to show data and examples of the combination of DDAC and imazalil, however the issue is whether one of ordinary skill in the art would have been motivated to combine the two compounds. Since it is obvious to combine two compounds which are biocidally active to form a third composition that is to be used for the very same purpose in view of *In re Kerkhoven* 205 USPQ 1069, (C.C.P.A. 1980). However, demonstrating unexpected results in (sic) necessary in order to establish patentability."

More importantly, the Office Action suggests "The specification provides unexpected results for DDAC in combination with imazalil at the following ratios, 2:1, 1:5 and 1:50, however the claims recite the range of 1:100 to 10:1. Therefore, the showing is not commensurate in scope with the claims."

The aforementioned rejection is respectfully traversed. Applicants respectfully disagree with the Office Action regarding the aforementioned rejection.

Nevertheless, the Applicants have amended claims 1 and 14 such that the proportion by weight of the amount of component (I) to component (II) in the active composition is 1:50 to 2:1. Support for this amendment can be in the specification on page 6, paragraph 0023, lines 32-35, as follows:

“As a general rule, however, it may be said that for most phytopathogenic fungi the suitable proportions by weight of the amount of component (I) to component (II) in the active composition should lie in the range from 1: 100 to 10:1, more preferably from 1:50 to 2:1.” [emphasis added]

Accordingly, the Applicants respectfully submit that the claimed compounds are now in condition for allowance. Thus, applicants request withdrawal of the rejection under 35 U.S.C. §103(a).

Applicants do not believe that any fees are required in connection with the filing of this Response. Please charge any fees, which may be required for this submission to Johnson & Johnson Deposit Account 10-0750/PRD2188USPCT/JKM.

Respectfully submitted,

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